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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

PANAMA*

[19 May 1997]

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* The initial report submitted by the Government of Panama is contained in document CAT/C/5/Add.24; for its consideration by the Committee, see documents CAT/C/SR.75 and 76 and the Official Records of the General Assembly, Forty-sixth session, Supplement No. 46 (A/46/46, paras. 209-236). For the second periodic report, see document CAT/C/17/Add.7; for its consideration by the Committee see documents CAT/C/SR.141, 142 and 142/Add.2 and the Official Records of the General Assembly, Forty-eighth session, Supplement No. 44 (A/48/44, paras. 311-341).

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I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS OF RELEVANCE TO THE IMPLEMENTATION OF THE CONVENTION

Article 1

1. For a jurisdictional decision to be taken regarding an offence against individual freedom in connection with a public servant who has subjected a detainee to torture, it is necessary to use as a basis the definition of the concept adopted by the text in question, since this constitutes the law of the Republic, having been duly ratified by the Legislative Assembly by means of Act No. 5 of 1987 and Chapter III, Title II, Book Two of the Penal Code identifies offences against individual freedom.

2. Specifically, article 160 of the Penal Code provides for two to five years' imprisonment for public servants who subject a detainee to torture, degrading punishment, harassment or arbitrary measures, so that this rule is a direct application of the above-mentioned Convention. In addition, this law also punishes a public servant who subjects a detainee to hardship or ill-treatment, stipulating for such cases prison terms of between 6 and 20 months.

3. A similar, though not identical, form of words has been adopted in article 2 of the Inter-American Convention to Prevent and Punish Torture, signed at Cartagena de Indias, Colombia, on 9 December 1985, at the fifteenth regular session of the General Assembly of the Organization of American States, which was approved by Panama by means of Act No. 12 of 1991.

4. We should point out that the definition of torture in the Convention must be taken into account when applying the ban on release from custody contained in article 2181 (5) of the Judicial Code, as amended by article 1 of Act No. 15 of 1993, whereby offences against individual freedom, accompanied by torture, degrading punishment or harassment, are excluded from the right of release from custody.

Article 2

5. Article 21 of the Constitution of the Republic prohibits the deprivation of liberty except on such grounds and in accordance with such procedures as have previously been defined by law, by virtue of a written warrant issued by the competent authority. What is more, a person may not be detained for more than 24 hours without being placed at the disposal of the competent authority, and this implicitly involves a ban on submitting an arrested person to harassment, torture or any act of cruelty, either in the course of arrest or during pre-trial detention. This article of the Constitution provides that public servants are liable to dismissal, and also to a criminal penalty if convicted in a criminal court.

6. Such culpable behaviour is described in Chapter III, Title II, Book Two of the Penal Code, and specifically articles 156, 157, 158 and 159, which make provision for the punishment of the following: public servants who, abusing their authority or in breach of the procedures laid down by law, deprive persons of their freedom or order or carry out searches of their clothing or

person; those responsible for the administration of a prison who admit a person to the prison without a written order by the competent authority, or refuse to obey an order from a competent authority to release a person when such an order exists; and competent public servants who, while aware of a case of illegal detention, fail to take or delay measures to terminate it or to report it to the competent authority.

7. In similar vein, article 22 of the Constitution of the Republic of Panama requires that a detained person be informed, in an intelligible way commensurate with his or her level of education and culture, of the reasons for his or her detention and of his or her corresponding constitutional and legal rights.

8. Persons accused of having committed an offence are entitled to a presumption of innocence until proved guilty at a public trial, with all the guarantees established for their defence, and must be assisted by a lawyer during the police inquiries and judicial proceedings. In furtherance of that principle, article 2043 of the Judicial Code provides, as a right of the accused, for the appointment of defence counsel from the moment of his or her arrest or summons to make a statement, and this is important because the lawyer in that procedural act, or in any other, becomes a guardian of the rights of the accused and prevents him or her from being subjected to serious pain or suffering, whether physical or mental, to obtain information or a confession, to confuse him or her in his or her evidence or to subject him or her to any kind of physical or moral pressure. In addition, counsel has the opportunity to criticize a question or an action.

9. Further to the above explanation, it should be emphasized that article 2038 of the Judicial Code allows the accused to assert his or her rights in accordance with the Constitution and the law from the initial step in the proceedings against him or her until the completion of the process. In addition, he or she may present documents and make requests to the person responsible for his or her custody, who must forward them immediately to the official in charge of the investigation or the judge hearing the case. It is strictly forbidden to hold the detainee incommunicado.

10. In order to guarantee the realization of these rights of the accused, suggestion boxes have been introduced at the initiative of the Office of the Attorney-General, in which all detainees in the various prisons are able to deposit complaints in this regard. Each box is kept locked and opened once a month in the presence of an official from the Attorney-General's Office and a prison official.

11. With the same end in view, judges, magistrates and investigating officials from all over Panama have a duty to visit all the prisons each month to report to the inmates on their cases, listen to complaints and check that human rights are not being violated, as provided in Title X, Book Three of the Judicial Code, articles 2529-2544.

12. Articles 2113-2116 of the Judicial Code require that the accused be informed of his or her right to appoint defence counsel and to remain silent if he or she has no counsel. Once this requirement has been met, or the accused has renounced his or her right to appoint defence counsel for the

moment and agreed that the proceedings can continue, the investigating official must explain to him or her in detail the alleged act, as well as the factual or circumstantial evidence against him or her and the sources thereof, unless this would prejudice the investigation. Moreover, when taking the accused person's statement and officially informing him or her that he or she has been charged, the investigating official must issue a judicial document of the investigation, which can be challenged by means of an interlocutory action or an appeal to the protection of constitutional guarantees.

13. In order to deprive a person of his or her liberty, the investigating official or the competent court must issue a judicial document or a reasoned decision explaining the charge, whether the offence has been substantiated by the standard forms of evidence, and the factual or circumstantial evidence that link the accused objectively or subjectively with the punishable act. If his or her pre-trial detention is effected without the performance of such formalities, it becomes absolutely null under article 2159 of the Judicial Code.

14. To avoid overcrowding and the possible inhuman treatment it might entail, Act No. 3 of 1991 introduced substitutes for pre-trial detention into Book Three, Chapter VI, Title II, Section 1 (a) (Personal Precautionary Measures) of the Judicial Code. These provisions, developed in articles 2147-A to 2161, require some explanations.

15. The personal liberty of the accused may be restricted only through the application, by the judge or investigating official, of the precautionary measures provided for in the legal rules in force, which may be applied only if there are serious indications of the responsibility of the accused, or if there are no circumstances justifying exemption from punishment, or grounds for extinction of the offence or the penalty that could be imposed for it (art. 2147-A of the Judicial Code). The personal precautionary measures are the following:

(a) A ban on the accused's departure from the territory of the Republic without authorization by the court;

(b) The obligation to appear periodically before a public authority;

(c) The obligation to reside in a specified place within the corresponding jurisdiction;

(d) The obligation on the accused to remain confined in his or her house, apartment or health establishment, as the case may be; and

(e) Pre-trial detention.

16. Decisions regarding personal precautionary measures can be appealed only with deferred effect (art. 2147-B of the Judicial Code).

17. Such personal precautionary measures are to be applied at the discretion of the judge, who must bear in mind the need for sound judgement when interpreting the evidence and other elements of the proceedings, taking into

account urgent requirements of the investigations arising from concrete situations that could endanger the acquisition or the authenticity of the evidence, if the accused attempts to flee or there is an obvious danger that he or she may endeavour to do so, and the offence carries a minimum penalty of two years' imprisonment, or when, given special circumstances or the personality of the accused, there is a real danger that he or she might commit serious offences using weapons or other means of personal violence.

18. When assessing the effectiveness of each of the measures, the judge should bear in mind their nature and the degree of severity involved, which must be proportionate to the nature of the act and the possible penalty that may be imposed on the accused. Pre-trial detention in a prison establishment may be ordered only if all the other precautionary measures are deemed inappropriate.

19. In the case of an accused woman who is pregnant or nursing her own child, or an accused person who is seriously ill or is over 65 years of age, pre-trial detention may be ordered only if there are precautionary requirements of exceptional significance. Nor must pre-trial detention be ordered - except where there are exceptional precautionary requirements - if the accused is dependent on drugs or alcohol and is undergoing a therapeutic rehabilitation programme in a legally authorized health institution and interruption of the programme could prejudice his or her addiction cure. Such circumstances must be verified by the judge or the investigating official.

20. If a precautionary measure is contravened, another more serious one may be imposed, according to the nature, motives and circumstances of the offence. The judge or investigating official is entitled to order the accused to appear before a given authority within his or her jurisdiction, specifying the days and times of such appearance, with due regard for the accused's occupation and place of residence, adopting in every case the verification provisions needed to ensure the effectiveness of the measure. The judge or investigating official may likewise order the accused to reside in a specified place within his or her jurisdiction.

21. If the accused is unable to provide for his or her own economic needs or those of his or her family, or if is in a situation of absolute poverty, the judge or investigating official may authorize him or her to absent himself or herself during the working day for the time needed to satisfy that requirement.

22. Article 34 of the Constitution does not exempt a person from responsibility for a manifest violation of a constitutional or legal provision to the detriment of another person on the grounds that he or she acted under orders from a superior. It excepts, however, members of the police force on duty, in which case responsibility falls solely on the hierarchical superior who gave the order.

23. Article 75 of the Penal Code requires that if the person who must serve a sentence is in grave danger of an early death by reason of illness, the execution of the sentence must be deferred until the danger has passed. In the case of a pregnant woman or one who has recently given birth, execution of the sentence must be deferred until the infant is six months old.

24. According to article 76 of the Penal Code, if a convicted person is suffering from mental illness before beginning to serve his or her prison sentence or contracts such illness after having begun to do so, the court shall suspend the performance of the sentence and order him or her to be transferred to a psychiatric hospital or other suitable establishment. Once, however, medical experts have certified that the convicted person has been cured, he or she must be transferred back to the appropriate prison establishment to serve the rest of his or her sentence, unless the term has already been completed.

25. Article 11 of Act No. 19 of 1991 introduced an innovation by adding a new paragraph 15 to article 98 of the Judicial Code, relating to the powers of the Third Administrative Litigation Division of the Supreme Court of Justice. It provides for a process for the protection of human rights whereby the Division is empowered to nullify administrative acts by national authorities and, if appropriate, to re-establish and make good the violated right, if, by the said administrative acts, human rights enforceable under the laws of the Republic have been violated. These include the rights enshrined in international human rights conventions. It is not required that the injured person should have previously exhausted administrative remedies. What is more, the Division's judgements are final, definitive and mandatory and there is no appeal from them.

Article 3

26. The provisions contained in the above-mentioned article, in respect of the extradition of persons applied for by foreign authorities, are addressed in the Judicial Code in Book Three, Chapter V, Section 2 (a), Title IX (Special Proceedings), articles 2504-2519. If extradition is to be granted, these provisions require that the criminal acts for which the person applied for has been tried, convicted or prosecuted must have been carried out within the jurisdiction of the requesting State and must carry a custodial penalty both in the legislation of that State and in the Republic of Panama.

27. The formalities require that the application be submitted to the Ministry of Foreign Affairs through the appropriate diplomatic channels or, if these do not exist, through the consular authorities or those of a friendly nation, together with the following documents:

(a) When the accused person has been convicted, a copy of the executory judgement and the evidence on which it is based, if that evidence is not contained in the judgement;

(b) In the case of an accused person, a copy of the committal order or the pre-trial detention order, as well as the evidence on which those orders are based;

(c) A detailed report on the criminal acts alleged, when the documents mentioned in the preceding paragraphs are not available;

(d) The text of the applicable legal provisions, as well as those relating to prescription of the criminal action and of the penalty; and

(e) The personal data enabling the person to be identified.

28. When the formal application for extradition has been received, the Minister for Foreign Affairs will study the documentation submitted. However, if a document has been omitted or some formality has not been complied with, a reasonable period of time will be granted to the requesting State in order to remedy the shortcomings noted. If the person concerned has been detained following representations by the requesting State, the latter will be informed that the person in question will be released 60 days after the start of the period of detention if the application for extradition has not been duly finalized by that time.

29. Extradition will not be granted in the following cases:

(a) When the subject of the application is Panamanian by birth or was naturalized Panamanian before the commission of the act on which the application for extradition is based;

(b) When the Panamanian courts are competent to try the person whose extradition is requested for the offence on which the application is based;

(c) When, in the view of the Ministry of Foreign Affairs, the person sought might be tried in the requesting State for an offence other than the one that gave rise to the application for extradition, or by a court of special jurisdiction;

(d) When the application had been rejected on an earlier occasion for the same offence, on the same grounds and in respect of the same person;

(e) When the person sought has served the appropriate sentence or has been pardoned or amnestied for the offence that gave rise to the application for extradition in the requesting State or in the Republic of Panama;

(f) In the event of prescription of the criminal action or the penalty imposed on the person sought under the legislation of the requesting State or in the Republic of Panama, prior to the application for extradition;

(g) In the case of persons who, in the opinion of the Ministry of Foreign Affairs, are being prosecuted for political offences or whose extradition is requested for predominantly political motives. The abduction, murder or assassination of a Head of State or any person exercising public authority at the time of the act will not be considered a political offence;

(h) When the offence carries the death penalty in the requesting State, unless the latter formally undertakes to apply a less severe penalty to the person sought;

(i) When the person sought is being tried or is serving a sentence in the Republic of Panama, his or her surrender to the requesting State, if extradition is granted, will be postponed until the criminal proceedings have been concluded, the case has been dismissed or the sentence has been served;

(j) When the person has been tried in the Republic of Panama for the same offence on which the application for extradition is based; and

(k) When the executive branch so decides, stating its reasons.

30. When extradition is refused on the grounds stated in (a), (b), (c) and (d) of the preceding paragraph, the person sought will be tried in the Republic of Panama as if the offence with which he or she is charged had been committed on Panamanian territory.

31. When the application for extradition has been deemed admissible as to form, the decision to grant the application for extradition will be taken by means of a ruling notified to the person sought; if the person does not contest it, he or she will be placed at the disposal of the requesting State forthwith. In order to contest a ruling granting an application for extradition, the person in question may bring a motion challenging the decision before the Criminal Division of the Supreme Court of Justice within a period of 15 working days, calculated from the date of notification of the ruling; the motion will be taken up in a hearing by the Office of the Attorney-General. The following constitute grounds for objection:

(a) The person is not the one whose extradition is requested;

(b) The documents submitted suffer from defects of form;

(c) The application for extradition is inadmissible on the grounds that the requesting State's right is not properly founded; and

(d) The application for extradition is contrary to the provisions of the law or of a treaty to which the Republic of Panama is a party.

32. Once the motion has been introduced, the Second Division of the Supreme Court of Justice will decide, within the following three working days, whether or not it is appropriate to grant the extradition request, and will immediately communicate its decision to the Ministry of Foreign Affairs and to the person in question.

33. When the Second Division of the Supreme Court of Justice considers the objection to be well-founded, it will revoke the ruling of the Ministry of Foreign Affairs and will order the immediate release of the person in question if he or she is being held in detention. If, in the opinion of the Second Division of the Supreme Court of Justice, extradition is justified, the executive branch may or may not grant it, as it deems fit.

34. Naturally, when extradition is granted, the requesting State has a period of 30 days in which to take the person sought into its charge. This period is calculated from the date on which the person has been placed at its

disposal. Consequently, if it does not take the person into its charge within that period, he or she will be released if he or she is being kept in pre-trial detention.

35. The person whose extradition is sought must be handed over to the agents of the requesting State at the place designated for that purpose or a place decided by the executive branch, unless decided otherwise by the requesting State and the Republic of Panama. Any items related to the offence and its perpetrators must also be handed over, although the rights of third persons over them are maintained. Any costs involved in the extradition will be payable by the requesting State.

36. In order to guarantee respect for due process and human rights, anyone detained under an application for extradition is allowed bail until the question of the application for extradition has been finally settled. The provisions of Panamanian criminal procedure will be taken into account in agreeing to and setting bail.

37. Foreigners being handed over by other States to a friendly third nation may pass through the territory of the Republic of Panama with the permission of the executive branch. Those escorting the persons being extradited should be required to provide sufficient security to prevent escapes.

38. Chapter III of Act No. 23 of 1986, as amended by Act No. 13 of 1994, lays down the following rules for extradition in cases involving drug-related offences:

(a) Matters of form and substance:

(i) The request must be addressed through the appropriate diplomatic channels of the requesting State, together with the following documents, duly authenticated and translated into Spanish:

a. A copy of the executory judgement and the evidence on which it is based, if that evidence is not contained in the judgement;

b. In the event that criminal proceedings have not been completed, a copy of the committal order or the pre-trial detention order, the evidence on which those orders are based and a succinct account of the alleged offence;

c. A copy of the legal provisions applicable to the criminal proceedings, as well as those which characterize the offence and those which relate to prescription of the criminal action and the penalty;

d. The personal data enabling the person whose extradition is sought to be identified;

e. Certification on the part of the requesting State that the following circumstances do not apply:

i. That the application had been rejected on an earlier occasion for the same offence as that on which the request is based, on the same grounds and in respect of the same person;

ii. That the person sought has served the appropriate sentence or has been pardoned or amnestied for the offence that gave rise to the application for extradition in the requesting State;

iii. That the criminal action or the penalty that has been imposed on the person sought is time-barred under the legislation of the requesting State;

iv. That the offence carries the death penalty in the requesting State, life imprisonment or degrading punishment;

(ii) On receiving the request, the Ministry of Foreign Affairs will forward it to the Office of the Attorney-General within five working days. If the request is granted, the Attorney-General will immediately order the temporary detention of the person whose extradition is sought, which may not exceed 60 calendar days;

(iii) At the time that he or she is temporarily detained, the person to be extradited must be notified of his or her rights and will have the right to use a lawyer for his or her defence from that moment. In the event that the person to be extradited lacks funds, an officially appointed lawyer must be assigned to him or her within 24 hours following his or her detention. He or she is also entitled to make use of all legal remedies available under Panamanian law;

(iv) The Attorney-General will have a period of five working days to determine whether the application for extradition meets the relevant legal requirements. If the request fails to do so, the Attorney-General will so inform the requesting State through the appropriate diplomatic channels to enable it to rectify and correct the request within a period of no more than 30 calendar days from the date of receipt of the communication by the requesting State;

(v) If the documentation submitted is in order, the Attorney-General will forward it to the executive branch to enable it to decide within a period of up to 15 working days whether or not to grant the extradition. Following

this decision, the matter will be returned to the Attorney-General, who will communicate the result through the appropriate diplomatic channels;

(vi) The extradition request is deemed to be valid:

a. If the request is made from Government to Government in accordance with the laws of the requesting State;

b. If the request is made through diplomatic or consular channels, in accordance with the laws of the Republic of Panama;

(b) Extradition will not be granted in the following cases:

(i) When the subject of the application is Panamanian;

(ii) When the application had been rejected on an earlier occasion for the same offence as that on which the request is based, on the same grounds and in respect of the same person;

(iii) When the person sought has served the appropriate sentence or has been pardoned or amnestied for the offence that gave rise to the application for extradition in the requesting State;

(iv) In the event of prescription of the criminal action or the penalty that has been imposed on the person sought under the legislation of the requesting State;

(v) When the offence carries the death penalty in the requesting State, life imprisonment or degrading punishment;

(vi) When the person sought has been accused or is being tried in a criminal case or is serving a sentence in the Republic of Panama;

(vii) When the executive branch so decides;

(viii) When the act considered to be an offence under the legislation of the requesting State is not characterized as an offence in Panamanian criminal law.

Article 4

39. Article 28 of the Constitution of the Republic of Panama prohibits the application of measures which impair the physical, mental or moral integrity of detainees in the prison system and requires inmates to be trained in occupations which will enable them to be reintegrated as useful members of society.

40. When explaining the implementation of article 1 of the Convention, we referred to a series of procedural guarantees laid down both by the Constitution and by the rules of criminal procedure in order to avoid physical or moral pressure being exerted upon anyone facing criminal proceedings.

41. From this starting point, articles 156 and 160 of the Penal Code qualify as an offence any act carried out by a public servant that subjects a detainee to hardship or ill-treatment, torture, degrading punishment, harassment, arbitrary measures or acts violating human rights that are recognized in agreements to which Panama is a party. The penalties range from six months to five years, depending on the nature of the offence committed and the category of crime involved.

42. Other acts violating human rights which might include an element of torture, involving abuse of authority and infringement of the duties of public servants, are also qualified in Book Two, Chapter IV, Title X, articles 336-342, of the Penal Code. Moreover, offences against individual liberty involving the unlawful deprivation of liberty or abuse of authority or infringements of legal formalities perpetrated by public servants are qualified as offences in Book Two, Chapter III, Title II, articles 151-160, of the Penal Code. In addition, human activities contrary to political freedom, freedom of worship, assembly or enterprise, the inviolability of the home, etc., are also typified as offences in other legislation.

43. Finally, we would repeat what was said earlier to the effect that article 2181 (5) of the Judicial Code does not permit bail to be granted to persons accused of offences against individual freedom, accompanied by torture, degrading punishment or harassment.

Article 5

44. The provisions of this article of the Convention are given concrete application by Panamanian criminal legislation under the principle of territoriality, whereby criminal law will apply to punishable acts committed on the national territory and other places under the jurisdiction of the State, subject to the exceptions established in the conventions and rules accepted by the Republic of Panama. The territory of the Republic comprises the mainland and islands, the territorial sea, the continental shelf, the subsoil and the airspace over them, Panamanian ships or aircraft and everything that corresponds to this concept, in accordance with the rules of international law. (This is the definition given in article 7 of the Panamanian Penal Code.)

45. In accordance with article 9 of the Panamanian Penal Code, Panamanian criminal law will be applied to punishable acts committed abroad in any of the following circumstances:

(a) When they produce or are intended to produce all or part of their effects in Panamanian territory;

(b) When they are perpetrated against any Panamanian or his rights;

(c) When they are committed by public servants or agents abusing their authority or violating the duties of their post or mandate;

(d) When they are committed abroad by persons in the service of the Panamanian State and have not been tried in the place of their commission by reason of diplomatic or functional immunity; and

(e) When they involve offences committed abroad by Panamanians whose extradition has been requested by another State, in order to try the case, and refused on the grounds of nationality.

46. Further to the above text, under articles 10 and 12 of the Panamanian Penal Code, Panamanian criminal law also applies to persons who commit punishable acts referred to in international treaties ratified by the Republic of Panama. When an accused person is on the territory of the Republic, and independently of the provisions that apply where the punishable act was committed and the nationality of the accused, judgements in criminal proceedings delivered in respect of the offences emphasized and described in the previous paragraph, including those referred to in the Convention, will not have the force of res judicata under national law.

47. Article 261 of the Penal Code, as amended by article 7 of Act No. 13 of 1994, stipulates that Panamanian law shall apply to drug-related offences against public health committed abroad, provided that acts relating to the consumption of the drugs or any transaction involving property deriving from drugs, as specified below, took place on Panamanian territory:

(a) The introduction or attempted removal of drugs from national territory towards or in transit to other countries;

(b) Sowing, cultivating or storing plant seeds from which cocaine and its derivatives, opium and its derivatives or marijuana may be produced. Sowing, cultivating or storing seeds from any other plant which causes physical or psychological dependence;

(c) Extracting, processing or manufacturing illicit drugs;

(d) Maintaining or financing plantations intended to produce illicit drugs;

(e) Owning, manufacturing or transporting precursors, chemicals, machines or items for the production and processing of illicit drugs;

(f) The purchase, sale or transfer of drugs for unlawful purposes for any reason;

(g) The prescription or provision of drugs by a doctor or a health professional without medical or therapeutic justification, or of a larger dose than necessary, and the provision, by persons authorized to sell or supply them, of drugs without a medical prescription or of amounts in excess of that prescribed;

(h) The unlawful possession of drugs for use or transfer for any reason;

(i) Using moveable or immoveable property for the preparation, storage, processing, distribution, sale, use or transport of drugs;

(j) Knowingly conducting transactions for oneself or through a third party, whether a natural or legal person, in banking, financial, commercial or any other establishments, involving money, bonds, securities or other financial resources resulting from the unlawful activities described in the previous paragraphs.

48. All these acts are specified in articles 255, 257-260, 262 and 263 B of the Panamanian Penal Code.

Article 6

49. The text of article 6 covers two eventualities or hypotheses: the first refers to persons who are sought by another State for the commission of offences amounting to acts of torture and who are on territory within Panamanian jurisdiction; the second refers to Panamanians who have committed acts of torture abroad or on Panamanian territory.

50. Both hypotheses are dealt with under Panamanian legislation. In paragraphs 44 to 48 above, concerning article 5 of the Convention, it was explained that articles 7, 9, 10 and 12 of Panama's Penal Code provide for the prosecution of offences committed by any person on Panamanian territory, including aircraft or ships registered in Panama. There is also a reference to the second hypothesis to the effect that judgements delivered in criminal proceedings brought against Panamanians who commit crimes abroad will not have the force of res judicata under national law.

51. When a national of another State enters Panamanian territory and the authorities are apprised of the situation, the Attorney-General's Office may institute inquiries, arrest the individual and contact the other State in order for it to apply for his or her extradition, provided that the application is in keeping with the indications set out in the section on article 3 of the Convention.

52. The detainee is given every opportunity to communicate with the representative of the State of which he or she is a national or the State in which he or she usually resides. The detainee is also informed of the grounds for his or her arrest and is entitled to appoint counsel for the defence and make use of all appropriate legal remedies.

Article 7

53. In accordance with article 2509 of the Judicial Code, if the application for extradition is rejected when the person sought is Panamanian by birth or was naturalized Panamanian before the commission of the act on which the request for extradition is based, then the person in question will be tried in the Republic of Panama as if the offence with which he or she is charged had been committed on Panamanian territory, in the following circumstances: when

the Panamanian courts are competent to try him or her for the offence on which the application is based; when, in the view of the Ministry of Foreign Affairs, the person might be tried in the requesting State for an offence other than the one that gave rise to the application for extradition, or by a court of special jurisdiction; or when extradition has been refused on an earlier occasion for the same offence, on the same grounds and in respect of the same person.

54. In such circumstances, the person concerned must be guaranteed due process at all stages of the proceedings, being entitled to communicate with his or her country's diplomatic representative, to appoint a defence lawyer and, when he or she does not have sufficient financial means, to have the court appoint counsel on his or her behalf, to be informed of the charges against him or her, to be provided with a copy of the pre-trial detention order and to be able to avail himself or herself of all judicial remedies. These matters, relating to guarantees of due process, are mentioned in the explanations given in connection with article 2 of the Convention.

Article 8

55. Panama complies with all the provisions of article 8. The crime of torture is recognized as a punishable act under Panamanian legislation; it is therefore considered as an offence for which the Republic of Panama can grant extradition. Article 2504 (2) of the Judicial Code considers as extraditable all offences enumerated in Panamanian criminal law. The section of this report relating to article 3 of the Convention explains the formal and substantive requirements for extradition.

Article 9

56. There are no rules prohibiting assistance in connection with criminal proceedings brought in respect of an offence under article 4 of the Convention. Panama therefore complies with the provisions of article 9 when requested to do so by another State.

Article 10

57. Article 44 of Act No. 16 of 1991, establishing the Criminal Investigation Service as a subsidiary organ of the Attorney-General's Office, prohibits law enforcement officers from inflicting, instigating or condoning any act of torture or other cruel, inhuman or degrading treatment or punishment. The article also disqualifies orders from a superior or exceptional circumstances, such as a state or threat of war, a threat to national security, internal political unrest or any other public emergency as justification for torture or other cruel, inhuman or degrading treatment or punishment.

58. Any officer of the Criminal Investigation Service who fails to observe this rule will not only be liable to disciplinary measures, but will also be subject to criminal proceedings to ascertain whether he has committed an offence against individual freedom or a violation of human rights.

59. Article 2112 of the Judicial Code provides that statements of persons suspected of being directly or indirectly involved in some way in an offence are not to be taken under oath or coercion. In any event, the article guarantees that the accused will not be subjected to torture or pressure or be handcuffed; moreover, the guard must not interrupt or interfere when the accused is making his or her statement.

60. Currently, all prison warders and guards are properly selected to work in prisons and are being trained in the observance of human rights. No one who has not received appropriate training is appointed and, since 1997, the University of Panama's Faculty of Law and Political Science has provided a five-semester course in penology.

61. Under articles 5, 12, 15, 16 and 18 of Executive Decree No. 168 of 15 June 1992, officers of the national police are required to refrain from torture or the use of lethal force when carrying out arrests, save in exceptional cases where the arrest is resisted or which are life-threatening.

Article 11

62. As explained in preceding paragraphs, articles 2112-2119 of the Judicial Code require that the accused should be guaranteed due process at all stages of the proceedings, including when making a statement, which should not be taken under oath or any kind of physical or moral pressure.

63. Article 28 of the Constitution of the Republic of Panama prohibits prison officers and supervisors from using methods which will impair the physical, mental or moral integrity of detainees. Failure to observe this rule constitutes a specific offence under the Penal Code, in article 160 concerning the conduct of public servants who subject detainees to hardship or ill-treatment, torture, degrading punishment, harassment, arbitrary measures or acts violating human rights that are recognized in agreements to which Panama is a party.

64. Articles 156, 157 and 158 of the Penal Code also qualify as offences against individual freedom acts perpetrated by public servants who, by abuse of authority or violation of the procedures laid down in the law, deprive a person of his or her freedom or order or carry out a search of his or her clothing or person, admit a person to a prison without an order from a competent authority, or refuse to obey an order for a person's release.

65. Under article 2181 (5) of the Judicial Code as amended by article 1 of Act No. 15 of 1993, those charged with offences against individual freedom, accompanied by torture, degrading punishment or harassment, are excluded from the right of release from custody.

66. In our clarifications concerning article 10 of the Convention, we referred to the seminar organized for prison guards and to the training on respect for human rights, and to the rules prohibiting police officers from using lethal force or torture.

Article 12

67. Acts of torture, hardship, ill-treatment, degrading punishment, harassment or arbitrary measures or acts violating human rights that are recognized in agreements to which Panama is a party may be prosecuted ex officio. The Attorney-General's Office must investigate them as soon as it is informed of their occurrence, without the need for a complaint, report or charge to have been submitted by the victim, in accordance with articles 1975 and 1976 of the Judicial Code.

68. Furthermore, under Book Three, Title X, articles 2529-2544, of the Judicial Code, competent officials from the judiciary and the Attorney-General's Office are required to carry out monthly visits to prison institutions in order to provide all inmates with detailed information on the status of their cases and to listen to their complaints on treatment, assistance, food, and the conduct of prison warders and officers, private or State-appointed defence counsel or prosecuting authorities. Should the competent authority observe an act of torture, it will initiate appropriate inquiries forthwith.

69. The Correction Department at the Ministry of the Interior and Justice is also responsible for supervising all aspects of the prison institutions. It must liaise with the wardens of the institutions in order to ensure that minimum rules for the treatment of prisoners are observed, in respect of their food, classification, paid labour, contact with the outside world, family and lawyers, diplomatic assistance for nationals of other States and training of prison staff. In this respect it is also assisted by non-governmental organizations such as the Panamanian Human Rights Committee, the National Bar Council, civic groups and religious organizations.

Article 13

70. Here we would repeat the clarifications given under article 12 which explained the informal investigatory procedure in Panama, which is available to any individual who has been subjected to torture in any territory within Panamanian jurisdiction. Under this procedure the person in question may submit a complaint or make a particular charge and be guaranteed a prompt and impartial decision, with steps taken to avoid reprisals against the complainant and witnesses.

71. The annexes contain court rulings on refusal to grant release as well as other decisions relating to trials which are conducted with the greatest impartiality and objectivity and provide the parties involved with the necessary procedural guarantees.

72. Moreover, article 41 of the Constitution of the Republic of Panama upholds the right of every person respectfully to submit requests or complaints to public officials, either for private motives or in the public interest, and to obtain a prompt decision on their complaints or petitions; it also sets a deadline of 30 days for the adjudication of the requests, queries or complaints.

Article 14

73. The issues raised in article 14 are dealt with in Book One, Title VI, articles 119-130 of the Penal Code. These provisions establish the civil liability of any person guilty of an offence. In a sentence handed down in criminal proceedings, the following may be ordered:

(a) Compensation for the material and moral damage caused to the victim, his family or a third party;

(b) Restitution of the property obtained as a result of the offence or, failing this, the value of the property.

74. In the case of persons deemed incapable because of mental incompetence, their civil liability remains once the cost of their maintenance and hospitalization have been met. Consequently, the parents, guardians, curators or persons having custody of the legally incompetent person bear subsidiary liability if they could have averted the injury or if they have neglected their custodial duties.

75. The civil liability deriving from the offence does not cease once the sentence has been served or the criminal action or penalty has become time-barred. It is transmitted to the heirs of the person found guilty of the offence - up to the amount of the inheritance - provided they accept it subject to benefit of inventory. The right to receive restitution, redress or compensation is transmitted to the heirs of the victim.

Article 15

76. In accordance with article 2120 of the Judicial Code, any measure or promise, coercion or threat used in order to secure a statement from the accused is prohibited, as is any loaded or tendentious question. Any official who infringes this provision will be liable to the corresponding disciplinary penalty and will also have to face criminal proceedings.

77. Supplementing the foregoing, article 769 of the Judicial Code categorizes as inadmissible evidence, inter alia, a confession or statement by a party to the proceedings or a statement by a witness if it has been obtained through torture or violation of human rights or is contrary to morality or public order.

78. We consider it appropriate to point out, also with regard to admissible evidence of punishable act, that article 2073 of the Judicial Code provides that evidence which is prohibited by law, which constitutes a breach of human rights or which is contrary to morality or public order is not admissible.

Article 16

79. As early as the initial explanation in connection with article 1 of the Convention, we made it clear that Panama has incorporated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into its criminal legislation. The Penal Code (Book Two, Chapter III, Title II, arts. 151-160) provides for offences against individual liberty.

Articles 156-160 cover offences by public servants who, abusing their authority or in breach of the procedures laid down by law, deprive persons of their liberty, or order or carry out searches of their clothing or person. They also relate to those responsible for the administration of a prison who admit a person to the prison without a written order by the competent authority, or who refuse to obey an order to release a prisoner issued by the same authority, and persons who subject a prisoner to brutality, ill-treatment, torture, degrading punishment, harassment or arbitrary measures. All such offences also carry the penalty of disqualification from public office for a period to be determined at the discretion of the competent court, which may not exceed 20 years (Penal Code, art. 52).

80. The provisions of the Penal Code are implemented throughout Panama and in its courts.

81. We append to this report a copy of the Penal Code, the Judicial Code and other legal instruments cited in the observations on each article.

II. FURTHER INFORMATION

82. The Panamanian prison system is based on the principles of security, rehabilitation and the protection of society. Consequently, measures which impair the physical, mental or moral integrity of detainees are forbidden and prisoners are being trained in occupations which will enable them to be reintegrated as useful members of society.

83. The overcrowded "Modelo" prison, which was a source of national shame, has now been demolished, and construction of the "La Joya", "La Joyita" and "Tinajitas" prisons in the district of Chepo and San Miguelito in Panama province has been completed. The prisons have workshops, an education unit, a clinic and a leisure unit and comply with the Standard Minimum Rules for the Treatment of Prisoners.

84. All existing Panamanian prisons are being renovated; the annexes to this report contain a table showing the improvements carried out in each prison and the corresponding financial investment (in dollars).

85. There are no political prisoners in the Republic of Panama. All persons held in prisons are subject to due process of law, under the responsibility of the courts and competent authorities. The prisons have interdisciplinary boards of specialists, comprising doctors, psychiatrists, social workers, legal advisers and psychologists, who are required to examine each prisoner in order to determine appropriate rehabilitation treatment and to provide medical and educational services.

86. Every month, judges, magistrates, public prosecutors and other competent officials visit prisons in order to inform prisoners of relevant developments and the status of their cases, and to listen to any complaints they may have about their treatment in prison.

87. The post of Public Defender was established under Book One, Title XIV, articles 406-430 of the Judicial Code to provide free legal assistance to all needy persons and enable any defendant to be assisted by a lawyer from the time of his or her arrest.

88. An education programme covering the first part of the secondary curriculum is currently under way at El Renacer prison in the interior of the country. As the number of prisoners there is small, they are allowed to take evening classes in the local schools and to follow university courses.

89. A programme of paid work in prisons has been approved by agreement with the Ministry of Trade and Industry. It comprises a system of micro-businesses and enables the prisoners to receive remuneration, part of which is used to cover the prison's expenses, part paid into a savings account and the remainder paid to relatives. The ongoing programmes comprise:

(a) Cabinet-making in the town of Penonomé (province of Coclé);

(b) Cabinet-making and welding at El Renacer prison in Panama City (province of Panama); and

(c) Dressmaking at the Women's Rehabilitation Centre.

90. It should be explained that the legal profession is regulated by decision No. 46 of 1991, adopted by the Supreme Court of Panama in full session, and that as a result all positions, from that of doorman to that of Supreme Court judge, are filled through competitive entry, ensuring that justice is administered objectively and impartially. The School of Law has also been established as a means of providing officials with refresher courses on the various branches of law, allied disciplines and human rights conventions.

III. ANNEXES*

91. We have divided this section into three parts.

92. The first contains case law; in other words, we append court decisions relating to the implementation of the Convention under consideration, as proof that what has been stated under each article is being done.

93. In the second part we have included a table showing the building and improvement work being carried out at the various prisons, with all relevant details.

94. The third part relates to the education and micro-business programmes, which are described in detail.

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* The annexes may be consulted in the files of the United Nations Centre for Human Rights.

95. We also append the legislation cited in order to enable the Committee to consider each statement and explanation in the light of the corresponding legal provisions.

96. Lastly, we append the decisions setting forth the rights and obligations of the Panamanian prison population, together with the incentives for inmates to undergo rehabilitation, to practise good behaviour and to comply with prison regulations.

97. The following documents are also submitted together with the report:

(a) The Constitution of the Republic of Panama;

(b) The Penal Code;

(c) The Judicial Code.